

REQUEST FOR PROPOSALS

Broadway Market Redevelopment

Architecture & Engineering Consulting Services for The Renovation of a 547,000-Square-Foot Public Market and Parking Facility in Buffalo, NY



**Empire State
Development**

Issued: April 20, 2023

Pre-Proposal Site Tour: April 28, 2023

RSVP for Pre-Proposal Site Tour: April 26, 2023

Proposals Due: June 14, 2023 at 5:00PM EST

Respondents must request a dedicated Dropbox for submitting a digital version of their proposal along with any inquiries to BroadwayMarketA&E@esd.ny.gov by **May 3, 2023**.

Primary Contact:

John Discolo, Senior Director

Paul Ray, Senior Project Manager

Secondary Contact:

Ralph Volcy, Senior Director

Johanna Walczyk, Senior Project Manager

CONTENTS

I. INTRODUCTION.....	3
II. HISTORY OF BROADWAY MARKET.....	4
III. PROJECT PARTNERS AND CONCURRENT EFFORTS AT THE MARKET.....	5
IV. GOALS OF THE MARKET’S REDEVELOPMENT.....	6
V. CONCEPT DESIGN.....	7
VI. CONTRACT TERM.....	10
VII. REQUIRED SKILLS & EXPERIENCE.....	10
VIII. SCOPE OF SERVICES.....	10
IX. REQUIRED PROPOSAL CONTENTS.....	14
X. SUBMISSION INSTRUCTIONS.....	15
XI. SELECTION CRITERIA.....	15
XII. GENERAL PROVISIONS.....	16
XIII. RESERVED RIGHTS.....	17
XIV. CONTRACTUAL REQUIREMENTS.....	18
1. Conflicts of Interest.....	18
2. State Finance Law Sections 139-j and 139-k forms.....	18
3. Vendor Responsibility Questionnaire.....	19
4. Iran Divestment Act.....	19
5. Executive Order 177.....	19
6. Executive Order 16.....	19
7. Non-Discrimination and Contractor & Supplier Diversity Requirements.....	20
8. Encouraging the Use of NYS Businesses in Contract Performance Form.....	23
9. Certification under State Tax Law Section 5-a.....	23
10. Schedule A.....	24
11. Project Sunlight.....	24
12. Insurance Requirements.....	24
13. W-9 Form.....	24
14. NYS Licensing Requirements.....	24

APPENDICES

- Appendix A. Broadway Market Business Plan (full report)
- Appendix B. Recommended Concept Design
- Appendix C. Vendor and Signage Guidelines
- Appendix D. Prototype Vendor Stall Designs
- Appendix E. Broadway Market Building Conditions Survey (2018)

<https://www.dropbox.com/scl/fo/v6k41e67dvwwcaztqi3vq/h?dl=0&rlkey=b20k3du15kp4zqlrvqplkdmecc>

I. INTRODUCTION

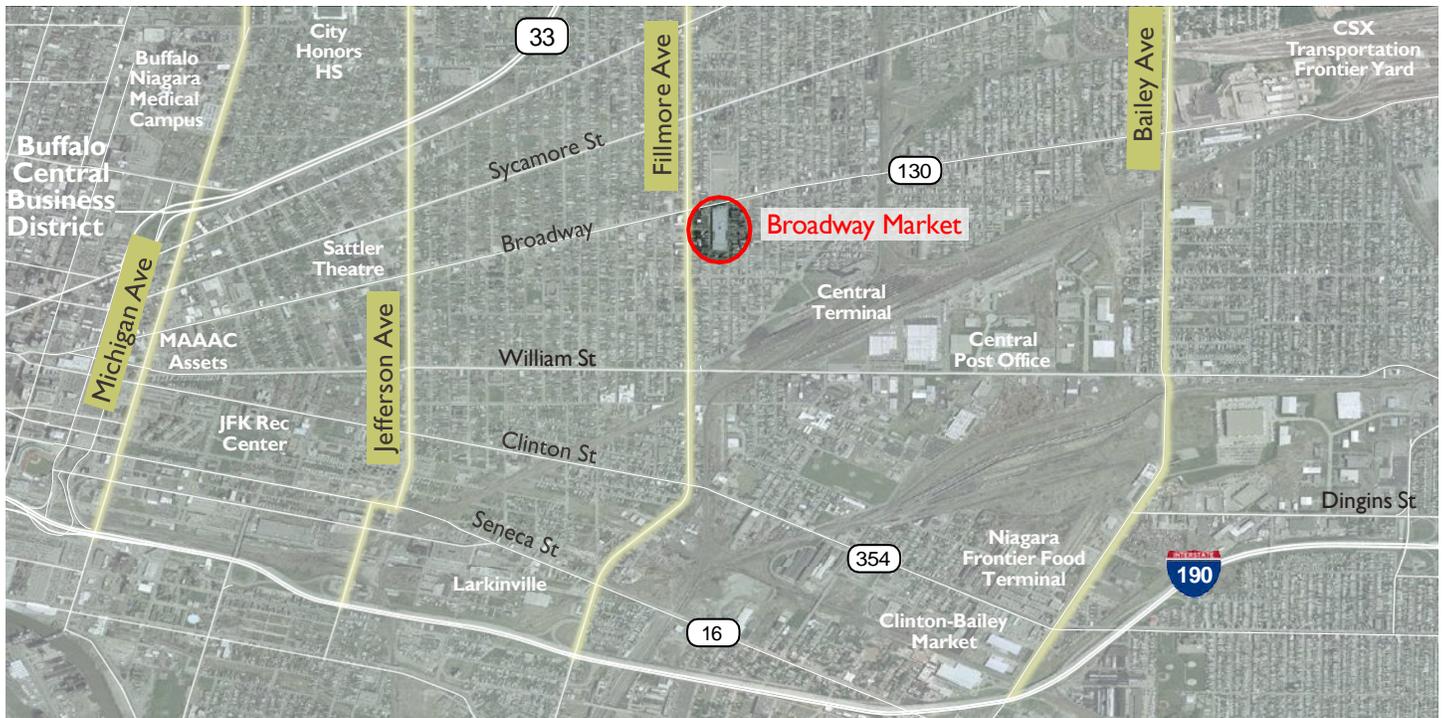
New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), is seeking to retain a professional architecture/engineering consultant firm and/or team (hereinafter referred to as the “Consultant” or “Contractor”) to provide design services related to a major rehabilitation of the Broadway Market (“the Market”), located in historic East Buffalo, New York. ESD is partnering on this effort with the City of Buffalo and local philanthropic organizations, led by the University at Buffalo Regional Institute (UBRI) (AKA the “Project Partners”), as part of a broader economic development initiative.



The Market is one of the oldest and largest public markets in the United States and is a significant asset to the City and its surrounding neighborhood. Famed for its old-world shopping atmosphere, the beloved Broadway Market’s concept of selling fresh and unique products remains unchanged since it first opened in 1888. Over its history, the Market has evolved as a focal point of Polish-American heritage in Buffalo, especially during the Easter season. More recently, the Market has expanded its mission to include fresh foods and goods from a multitude of cultures from across Buffalo, Western New York and the world. But despite its historical significance and its role as an anchor in the local food system, the Market struggles to attract consistent traffic throughout the year. Its reliance on annual and monthly influxes of shoppers has hampered its ability to reinvest in its facility and recruit new vendors. This has led to stagnation and an inability to compete with other food venues.

Although the Market has seen its share of challenges, it still plays a prominent role in the Broadway Fillmore Neighborhood and East Buffalo. For this reason, it was identified as an anchor institution to be funded through ESD’s East Side Corridor Economic Development Fund (“ESCEDF”) in 2019 and through the subsequent NYS Regional Revitalization Program (“RRP”) in 2022. This funding will help create a vibrant, competitive public market that will catalyze a healthy, diverse Broadway Fillmore neighborhood; increase business for existing Broadway Market vendors while fostering new food service entrepreneurs; and enhance local food system sustainability and community health. In total, \$43 Million has been committed thus far by the State of New York, the City of Buffalo and a consortium of local philanthropic organizations to fund renovations and provide technical assistance throughout the Market’s rehabilitation process.

In 2020, officials took the first step in the redevelopment process by commissioning a business plan to guide future operations and capital improvements. The resulting document—Buffalo’s International Broadway Public Market Business Plan (“the Plan” or the “Business Plan”)— released in January 2021, articulates a vision for transforming the Market into a unique center for regional, fresh and international foods by re-purposing the building and filling it with additional tenants and new exciting amenities. The business plan lays out several steps for renovating facilities, updating vendor stalls, providing new products and establishing a new non-profit to operate the Market.



The Broadway Market’s Location in East Buffalo

II. HISTORY OF BROADWAY MARKET

The Broadway Market was started by a group of citizens on a city-donated parcel at 999 Broadway in 1888. It quickly became a community meeting place for local immigrant populations—a place ideal for combining business with socializing and sharing stories and news from the old world.

As immigrants flocked to East Buffalo in the late 1800s, they looked to continue old-world customs in their new and unfamiliar environment. While they wanted to enter the mainstream of modern city life, they also sought to preserve their Eastern European traditions and heritage. The Broadway Market served these needs. As the Market expanded to cover an entire block, bordered by Broadway, Lombard, S. Market, and Gibson Streets, the Market became the center of Buffalo's largest retail district. People fondly remember the hundreds of thousands of citizens, parading in front of the Market, down Broadway, to celebrate Thanksgiving and Labor Day.

Although continuously operating on the same site, there have been three separate physical structures that have housed the Market over its history. The first building, built-in 1879, was modeled after a Market in Krakow, Poland. At the beginning of the 20th century, following a fire, the Market was replaced with an unheated building twice the size. In 1956, this building was replaced with the current structure, including 1,100 parking spaces and roughly 100,000 square feet of potential retail space.

The Broadway Market has long been an international Market that reflected the diverse communities in Buffalo. Historically, the Market sold delicacies from throughout the world, among other unusual and fine products. The Market has long served as an incubator for family-owned and operated immigrant-focused businesses. Over the last few decades, the Market focused its goods on the Polish and German populations that constituted the majority of Broadway Fillmore neighborhood residents for the first half of the 20th century. As Polish and German residents left the neighborhood for the suburbs, the Market has not significantly adapted to the new varied community of primarily African American, Bangladeshi, Korean, Vietnamese, Arabic, Somali, African, and Laotian immigrants. Today, the Broadway Market struggles for customers and merchants except during the Easter season when hundreds of thousands of prior and current area residents return to buy Polish specialties.

In addition to a number of physical changes to the Market, the 2021 Business Plan called for a fundamental change in the way the Market is managed, moving from City of Buffalo management to a not-for-profit corporation. In mid-2022 the Broadway Market Management, Inc, (BMMI) was created through the re-purposing of a then-dormant, not-for-profit agency under the auspices of the Buffalo Urban Renewal Agency. Once fully staffed and established, BMMI will enter into a formal agreement with the City of Buffalo to lease the facility for \$1 per year in return for meeting a series of annual performance measures.



The Broadway Market At The Turn Of The Century

III. PROJECT PARTNERS AND CONCURRENT EFFORTS AT THE MARKET

Project Partners

Empire State Development (ESD) Western New York Regional Office: The mission of ESD is to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State (NYS) through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance. ESD’s Western New York Regional Office is responsible for convening the WNY REDC—a broad-based economic development coalition made up of government, business, and community leaders; and for facilitating the planning, funding, and implementation of large-scale regional economic development initiatives. These efforts involve strategies to invest in key tradable economic sectors in WNY, facilitates revitalization of urban core neighborhoods, helps prepare the region’s workforce, and advances smart growth sustainability principles. ESD is responsible for administering New York State capital funds dedicated to redeveloping the Broadway Market in both the ESCEDF and the RRP.

City of Buffalo, Mayor’s Office of Strategic Planning (OSP): OSP, a division within the City’s Executive Department, coordinates economic development activities throughout the City of Buffalo, as well as with other public agencies including ESD and the WNY REDC. OSP is subdivided into four divisions: The Division of Development works directly with the business community and real estate developers. The Division of Real Estate handles real estate transactions related to City-owned property, including vacant lots, residential structures, and capital assets such as decommissioned schools and fire houses. The Division of Planning & Zoning oversees the administration of the City’s development regulatory boards (Planning Board, Zoning Board of Appeals, and Historic Preservation Board) and engages the community in planning initiatives. The Division of Environmental Affairs handles matters related to state and federal environmental review, implementation of state and federal environmental land use laws, and oversees the Environmental Management Commission. OSP coordinates with two closely associated development agencies, the Buffalo Urban Development Corporation (BUDC) and the Buffalo Urban Renewal Agency (BURA).

Broadway Market Management, Inc, (BMMI): BMMI, the not-for-profit management entity that will now manage the Market, was created in 2022 by BURA from a then-dormant, not-for-profit local development agency that was registered with the New York Department of State (DOS). Formal action was taken to register a name change with DOS; dismantle the board (which had been solely made up of local elected officials), issue interim bylaws, appoint initial board leadership, and take other NYS-required actions to re-purpose the entity as the framework for a Market management entity.

University at Buffalo Regional Institute (UBRI) is a local and national award-winning research center within the University at Buffalo School of Architecture and Planning working in Western New York for over 30 years, pursuing public scholarship with community constituencies to build stronger regional economies with better places for all people. Grounded in the disciplines of research and analysis, UBRI takes an objective approach to understanding complex issues in placemaking, workforce, sustainability, and innovation, and translates this understanding into useful and relevant information for the communities they serve. Since 2011, UBRI has provided ESD with strategic planning and problem solving; public engagement, communications; and tracking, monitoring, and reporting for the region’s major economic development efforts, particularly those in East Buffalo, inclusive of revitalizing the Market. UBRI played a large role in the ESD’s ESCEDF; leads the Project Implementation Team for its complementary philanthropic-sponsored effort known as “East Side Avenues”; and played a key role in the development of the RRP. UBRI representatives will work with the Consultant and Project Partners on all aspects of the work outlined in this RFP.

Other Efforts At the Market

Concurrent to or proceeding the scope of services in this RFP, are a number of other projects/efforts already or soon to be underway that require technical assistance from additional consultants. These include:

- Engagement of an organizational consultant to assist BMMI in various general aspects of governance, organizational infrastructure, administrative, and financial functions of the new not-for-profit corporation;
- Launching a search process for executive leadership for the Market with the assistance of an executive search firm;
- Operationalizing specific action items from the concepts/programs outlined in the Business Plan, using a subject-area public market expert consultant that will be procured/contracted with ESD; and
- Completing a short-term project for designing/fabricating an initial test prototype for improved vendor stalls at the Market and other near-term repairs.

When necessary, the Consultant should be aware of these concurrent efforts, work in coordination with the consultants and Project Partners on these efforts, and/or be able to share information with management/ consultants responsible for these efforts.

IV. GOALS OF THE MARKET'S REDEVELOPMENT

The proposed rehabilitation will begin a new chapter in the Market's story by transforming the building into a vibrant community space that is a source of fresh international foods, a neighborhood gathering place and a resilient community asset. The physical transformation of the Market along with the implementation of the Business Plan will be guided by the following goals:

- Utilize the entire building for the Market or related activities;
 - Fill the Market with a variety of fresh and ethnic food stalls and international groceries as well as dine-in restaurants and prepared food stalls;
 - Ensure that the Market's tenants, employees, and staff, are representative of and serve the area's residents;
 - Make the Market a 'must-see' for the millions of annual Niagara Falls visitors;
 - Partner with organizations and public agencies that will help assure the Market's success;
- Improve the accessibility of the basement and renovate it to serve the Market's tenants by adding space for walk-in coolers, freezers, and storage, as well as building utilities;
 - Open up the ground floor exterior to the street and focus ground floor retail and attractions on restaurants, fresh food stores, and international groceries that 'spill out' onto the sidewalk;
 - Improve interior circulation and storage;
 - Makeover the second-floor parking and ramps so they are bright, attractive, safe, and accessible;
 - Create new activity on the rooftop with recreational and entertainment uses; and
 - Create a year-round 'social' space and neighborhood asset by adding community-focused amenities, services and recreational programming.



Concept for a Renovated Interior of the Market

V. CONCEPT DESIGN

Three design concept schemes were explored during the drafting of the Business Plan. Ultimately, “Concept Scheme 3” was recommended in the Business Plan as the preferred concept to advance. In total, this concept was estimated to cost \$44.4 Million (2020 USD). Floor plans and concept renderings that illustrate Concept Scheme 3 can be found in Appendix B of this RFP.

The following sections outline aspects and characteristics of the concept design components included in the 2021 Business Plan. **Please note: these component descriptions are being presented for illustrative purposes to convey the anticipated scale of the overall Project. As noted in Section VIII, the Scope of Services will require the selected Consultant to undertake a programming and phasing exercise to identify which portions and components of the concept design that will be advanced to construction now and those that will await subsequent phases of funding/development at the Market.**

Building and Program Enhancements

A number of building and program enhancements were considered as a part of concept design with the aim to improve visitor, vendor and community experience.

A major proposed program component is a Special Events Area which features a tiered seating element which also connects the first floor to the second floor. This area is intended to be centrally located and accommodate a variety of events ranging from presentations, concerts and community meetings. In order to accommodate this area, existing escalators would be removed and the current floor second floor opening would be enlarged/modified. The existing (recently installed) Community/Demonstration Kitchen would remain at its current location. A proposed Community Classroom would be located adjacent to it to facilitate culinary demonstration and dietary education programs. This Community Classroom could be used for general community and vendor meeting purposes as well.

A Broadway Market Administrative Suite (with a shared conference room) would be located remotely in the building plan while providing ready access to the Market floor for vendor contact and collaboration.

Finally, miscellaneous mechanical and storage areas could be located in an expanded first floor footprint, while new restrooms would be centrally located near the loading area (readily available to the Market vendor floor area) and at the southern end of the building plan.

Basement Level

The basement level of the Market currently provides some building and vendor support spaces, however, it is not used effectively nor efficiently. This area is underused by vendors since there is no elevator to facilitate product movement and storage in the basement (vendors have to move products manually down a set of stairs). As a way to maximize the use

of this floor level for building and leasable vendor storage use, the concept suggests the installation of a new freight elevator connecting the first floor/loading dock area to the basement level. Leasable walk-in refrigeration and freezer equipment for vendor use could also be provided at this level.

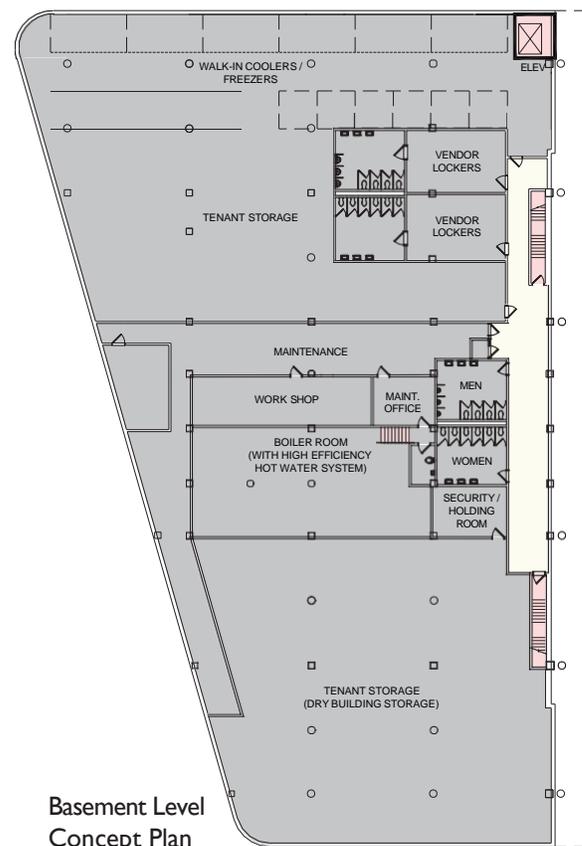
Existing building mechanical spaces and equipment and Maintenance Services would remain in the basement, but a larger workshop area is suggested to facilitate vendor stall or building maintenance or repair needs.

One set of existing restrooms in the basement would remain for (overflow) seasonal visitor use, while other existing restrooms and locker areas in the basement would be dedicated to building maintenance and vendor staff use.

Finally, a Security Office/Holding Room can also be accommodated in the basement area to address minor theft/infracton issues.

First Floor Indoor/Outdoor Market

A strategy to add variety to the visitor experience is the proposed development of an indoor/outdoor market area along a portion of Gibson Street. The idea is to open up the façade by introducing a series of fixed storefronts and operable overhead doors which would transform the pedestrian experience by adding variety and transparency to the façade.



**Basement Level
Concept Plan**

This area would provide vendors the opportunity to feature products in an open outdoor (but covered) setting during fair weather seasons. In colder seasons or in times of inclement weather, this area could be “closed” but still remain accessible for vendor and visitor use. Dedicated vendor shops along the indoor/outdoor market area would have their own entrances into their spaces and could take advantage of additional “spill-out” space. These vendor shop entrances provide visitors with more entry points into the Market.

Vendor Area and Optimal Floor Usage

The balance of the interior Market footprint would be occupied by a variety of vendor stall types and sizes. They would be organized in such a manner to minimize the number of circulation paths and maximize the amount of leasable floor space (therefore maximizing income). Ideally, main pedestrian circulation would be limited to 8ft clear between vendor spill-out areas and would be organized in such a way to facilitate visitor movement throughout the building while providing clear access to the majority of vendor stalls. General seating areas are located in limited areas of the building plan (at the main Broadway entrance and near the Special Events Area) to maximize leasable space.

First Floor Retail Spaces

A key consideration of the organization of the Broadway Market plan is the proposed increase and variety of vendor opportunities. The interior reconfiguration of this scheme suggests an expansion of the available footprint that captures additional leasable, income-generating floor area. Given the ample availability of parking in the building and in the surrounding neighborhood, this expansion could be achieved by replacing first floor parking with new retail and support spaces.

A portion of these retail spaces would be distributed along the northern portion of the Lombard Street façade and the entirety of the southern end of the building. This commercial mix and distribution would provide a variety of retail experiences to visitors in the Broadway Market and allow the opportunity to add storefront systems along both Lombard Street and Gibson Street - transforming the pedestrian experience by adding variety and transparency to the façade.

Most of these retail spaces could potentially have their own entrances from the sidewalks and could provide additional points of access into the Market. Also, this configuration could allow retailers to open earlier or stay open later than the rest of the Broadway Market vendors stalls or kiosks since access to the Market (through their spaces) could be separated and secured. Exterior signage at some of the retail entrances could also add to the diversity and liveliness of streetscape appearance and experience.

Also, by locating retail spaces to the perimeter, various vendors who may sell products that have strong undesirable odors (such as fresh meats or seafood), could be located at these areas—facilitating the ventilation and exhaust of those odors to the exterior.

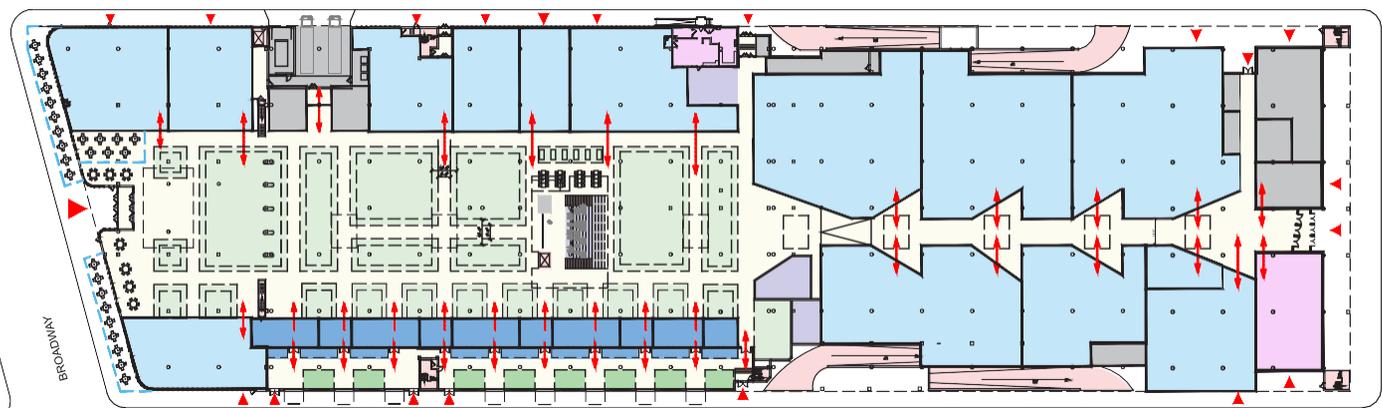
Loading Area

The existing loading area along Lombard Street would remain at its current location. This loading area would accommodate two dedicated spaces for box truck delivery. The loading area would have direct access into the Broadway Market vendor area to serve/stock vendor stalls. A new proposed freight elevator adjacent to the loading area would provide vendors access to basement storage (mentioned above).

A portion of the loading area would be captured to accommodate a 15yd/20yd trash compactor to facilitate building trash storage and removal. A small recycling and cardboard storage room adjacent to the loading area would also be provided. An additional trash holding room could be located in the parking area of the building if needed.

Light-Shaft Daylighting

A main architectural objective is to open up the perimeter of the existing Broadway Market building to provide transparency and daylight to and through the building interior, as well as to provide visual interest and variety to passers-by. As a complement, the design concept includes a number of new light-shafts (running from the second floor through to the roof) to bring natural daylight into the main footprint of the plan. These would run in the north-south direction from the Broadway entrance down to the South Market Street entrance.



First Floor Level Concept Plan

Second Floor Level

The second floor is envisioned as the main parking level of the building. It is anticipated that a large number of visitors would enter the Broadway Market from this level and, therefore, a large glass entry vestibule is proposed. From this vestibule, visitors can take a new elevator to the first floor or roof levels. Visitors can also walk down the main tiered seating element to reach the first floor or up a new staircase to the roof. A number of daylight shafts from the roof and a maintenance storage space would also be located on this level. Repaving and restriping of this area could yield approximately 286 parking spaces for staff and/or visitor use. It is also anticipated that new lighting and security systems would be incorporated at this level to convey a sense of visibility and security.

Potential Roof Level Uses

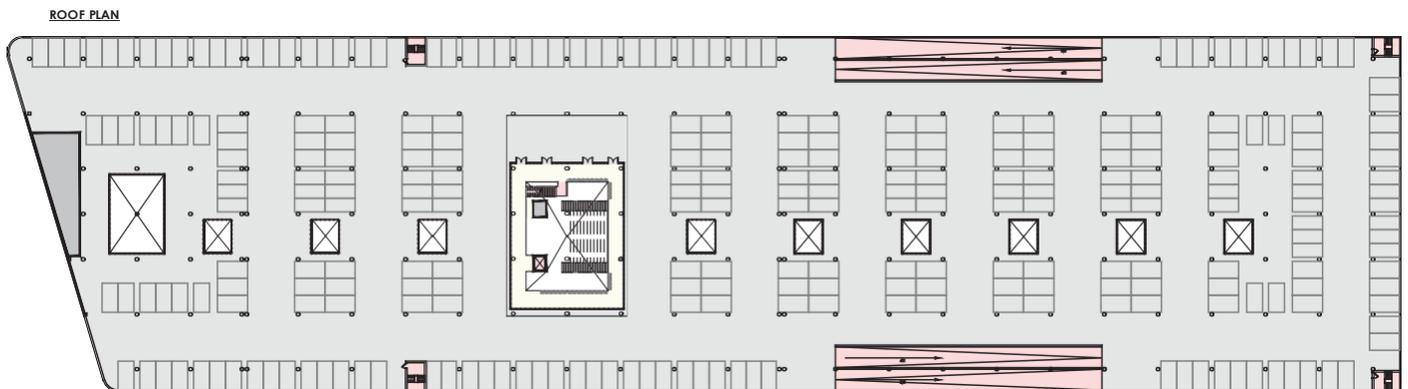
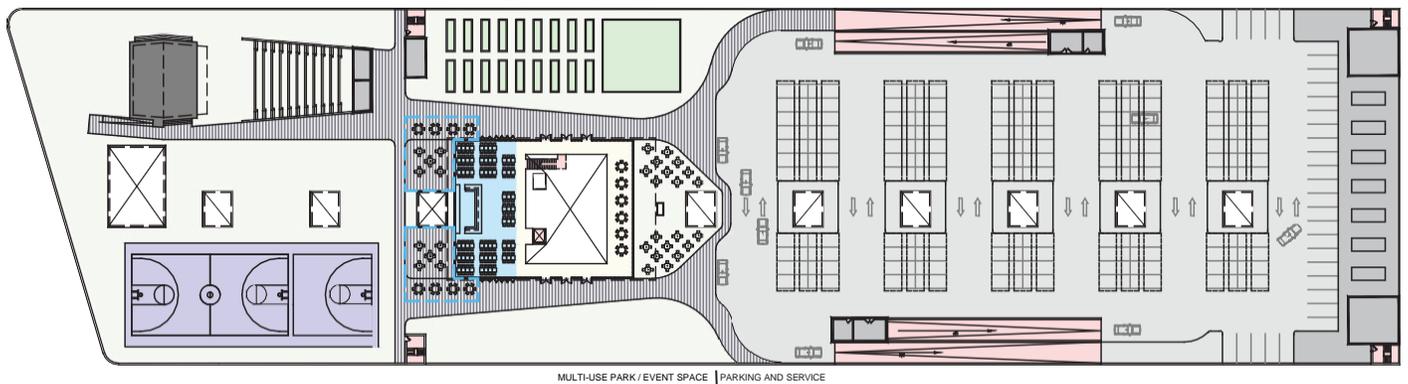
As part of its effort, the concept design included opportunities to provide visitors and staff of the Broadway Market access to open outdoor space. This included the possibility of reducing the amount of parking on the expansive roof level and providing a number of outdoor features that could become amenities to visitors and staff of the Broadway Market, as well as, to the residents of the surrounding neighborhood and community.

Rooftop Restaurant and Seating Areas. The concept design proposes the potential development of an enclosed rooftop restaurant with both indoor and outdoor seating areas with fire pits. This rooftop restaurant could provide another entrance into the Broadway Market with direct access to the Market hall on the first floor via a new elevator or a series of stairs.

Greenhouse and Community Garden. As part of the potential amenities offered at this level could be a community and/or vendor greenhouse and garden. The garden (with elevated planter beds) and the greenhouse could be used by vendors to grow produce year-round that could be sold in the Market below. Conversely, these could also be used by the surrounding community for its own use or as a means to educate children and adults in techniques of gardening.

Tiered Seating and Open Covered Stage. Another potential feature of the roofscape could also include a tiered seating element and an open roof-covered stage area. This amenity could accommodate a variety of events ranging from presentations, concerts and community meetings. Associated convenience restrooms could be provided as this level as well.

Parking and Mechanical. The balance of the roof level will provide parking for approximately 141 spaces. These parking spaces could be covered with solar panel canopies—providing shade to vehicles parked on the rooftop level and the possibility of generating electricity which could offset base building power needs. A portion of the roof level could also accommodate mechanical equipment required to provide basic cooling, heating or ventilation needs to the Broadway Market on the first floor.



SECOND FLOOR PLAN
Second Floor Level & Roof Level Concept Plans

VI. CONTRACT TERM

Currently, funds are available to cover work through the end of the design development stage. As additional funding becomes available, it is anticipated that ESD and the Consultant shall negotiate fees and amend its agreement with the Consultant to provide the scope of work necessary to complete the project. In the event that additional funding is limited and significant value engineering is needed to construct the project, the remaining work may need to be broken into separate phases.

VII. REQUIRED SKILLS & EXPERIENCE

The Consultant or team must possess training, skills, and experience in the following areas of expertise:

- Architecture, landscape architecture and urban design.
- Community resilience and sustainable building design.
- Land surveying/mapping.
- Civil/structural engineering.
- Construction cost estimating.
- Preparation of preliminary/final design and construction documents/packages to support contractor solicitations and permits.
- Historic/cultural resource investigations and SHPO consultation related to Section 14.09 of the NYS Historic Preservation Act and Section 106 of the National Historic Preservation Act.
- Experience in the determining the feasibility and structuring the application and syndication of Federal/ New York State Historic Tax Credits.
- Environmental assessment documentation related to the New York State Environmental Quality Review Act.

VIII. SCOPE OF SERVICES

Respondents must provide a proposal that covers, at a minimum, all the tasks shown below covering all portions of the building identified in the concept plan. Respondents may propose additional tasks, refinements to tasks, or modifications to concept plan recommendations as needed to successfully complete the project, provided that they demonstrate how these would still meet or exceed the overall goals of this effort.

Task 1: Agency Coordination & Project Management

The Consultant must:

- Coordinate with the Project Partners and various utility companies as required to determine the project constraints, landscape guidelines, and operational/maintenance issues. This task also includes project management and scheduling updates throughout the duration of the project. Consultant shall also confer with public code officials and ensure compliance with local, regional, and state/federal laws.
- Work with a technical advisory group with representatives from the ESD, BMMI, the City of Buffalo, and local philanthropic entities (represented through UBRI) regarding future plans and programming to ensure the physical design supports the anticipated uses of the Market.

Task 2: Stakeholder Engagement & Communications

The consultant must:

- Create and implement a stakeholder engagement plan that includes outreach to various groups throughout the project including organizations and individuals from the surrounding neighborhood, the City of Buffalo and the Western New York Region.
- Create content and manage logistics for stakeholder outreach including, but not limited to, in person meetings, online webinars, surveys, social media posts and press releases.
- Make a strong effort to engage existing and potential customers and vendors, especially those from surrounding neighborhoods and New American communities.
- Maintain a project website through the duration of the project that includes progress updates, relevant documents and a means of collecting input and inquires.
- Draft press releases and other communications collateral.
- Design and produce an up-to-date on-site exhibit that will inform Market patrons and the general public about the project. Updates must be made at least once per design phase (i.e. Concept, Schematic, Design Development and Final). Space for the exhibit is approximately 250 SF.

Task Deliverables: Stakeholder Engagement Plan, supporting content for outreach campaign and physical exhibits

Task 3: Existing Conditions Analysis

The Consultant must:

- Partner with a NYS licensed land surveyor for topographic survey to document the existing structures and utilities.
- Prepare a digital base map for the project in AutoCAD and Adobe Illustrator format. The base map will depict record right-of-way, existing utilities, record easements, and the aerial topographic and record boundary information.
- Create a 3D Building Informational Modeling (BIM) model through digital scanning of the Market/parking structure.
- Assess the current physical layout of vendor stalls, and amenities, mechanical systems, etc. based upon conceptual assessment included in Business Plan.

Task Deliverables: Updated survey information and digital base map

Task 4: Manage Historic Tax Credits

Insofar as previous area-wide studies have identified the Broadway Market as eligible for inclusion of the National Register of Historic Places (NRHP), the Consultant shall work with project sponsors to determine the feasibility of syndicating Federal and New York State Historic Tax Credits (HTCs) for the project, to leverage anticipated ESD capital funds to be invested in the Market's revitalization. If the property is eligible and a feasible structure for HTC syndication is identified, the Consultant shall assist the project sponsors in brokering a HTC deal to bring new revenue to the project.

The anticipated work shall include the following items:

- Feasibility of Applying HTCs/Overall Development Services
 - Investigation and further evaluation of NRHP-eligibility of Broadway Market.
 - Implications of City of Buffalo ownership of Market and options for for-profit ownership structures that would be required for HTC syndication.
 - Consideration of financing structures and potential classification of ESD investment in Market to facilitate HTC syndication.
 - Preliminary estimates of Qualified Rehabilitation Expenditures (QREs) and funds that could reasonably be realized through syndication.
 - Evaluation of overall implications of applying HTCs in terms of architectural/design flexibility with the National Park Service ("NPS") and New York State Historic Preservation Office ("SHPO") requirements.

- Evaluation of overall implications of applying HTCs in terms of financial implications of both upfront costs and financial restrictions over the life of the HTCs.
- Evaluation of Historic Significance (Part 1)*
 - Preparation of a significance statement for the Property.
 - Preparation of a property description for the Property.
 - Production of all photography required to complete the above.
 - Conduct all necessary research for the above.
 - Produce all necessary maps for the above.
 - Negotiation of Part 1 requirements with the NPS and/or SHPO.
 - Assembly and submission of Part 1 application to SHPO and NPS, including production of all necessary photography and maps.
- Description of Proposed Rehabilitation (Part 2)*
 - Preparation of the description of the Property's existing condition.
 - Production of all photography required to complete the above description.
 - Preparation of the description of the Property's proposed rehabilitation.
 - Review of construction drawings required to complete the above description.
 - Negotiation of Part 2 requirements with NPS and SHPO
- Assembly and submission of Part 2 application to SHPO and NPS, including organization and identification of all required photography and drawings.
- Certification of Completed Work (Part 3)*
 - Preparation of the description of Part 3 application for the Property.
 - Production of all photography required to complete the above description.
 - Review of completed final project documents required to complete the Part 3.
 - Negotiation of Part 3 requirements with NPS and SHPO
 - Assembly and submission of Part 3 application to SHPO and NPS, including organization and identification of all required photography and drawings.

- Post-Part 2 Application Submission Work*
 - Respond to any Part 2 conditions.
 - Amendment applications.
 - SHPO/NPS correspondence and negotiations.
 - Overall assistance with HTC syndication project structuring.
 - Providing application documentation to Client’s investors, financial institutions, professionals service providers, etc.
 - Construction monitoring during the rehabilitation to ensure work is in compliance with the approved Part 2 application.

* Note: Services associated with actual application and professional support for HTC syndication will only be advanced upon determination by project sponsors to pursuing such HTCs are feasible

Task Deliverables: Working memorandum on the feasibility and implications of HTC application/syndication; Parts 1, 2 and 3 forms and any supporting documentation; any relevant amendments

Task 5: Project Programming & Development of Phasing Plan

The Consultant must:

- In coordination with the Project Partners, undertake a Project programming exercise to evaluate capital improvement components and costs included in the Business Plan to prioritize those components that would best advance rehabilitation objectives of the Plan and could reasonably be implemented with current sources funding and/or would be eligible with funding sources that could augment the Project budget.
- Prepare a phasing plan that allows for continuous operation of the Market and also prioritizes renovation of the front entry, the first-floor vendor space at the front of the Market and the loading docks.

Task Deliverables: Project Phasing Plan

Task 6: Refined Concept Design & Schematic Design (up to 30% Design Completion)

The Consultant must:

- Develop a minimum of three (3) design concepts for the building and vendor stall layouts/configurations.
- Provide an estimate of probable costs. The estimate should include major components and identify escalation factors.
- Develop/apply evaluation criteria to rationally assess and weigh the relative advantages and disadvantages of each alternative. This assessment should be developed in manner suitable for public and stakeholder review.

- Explore the use of sustainable design practices and performance standards for all relevant building systems, in accordance with established industry standards such as [ASHRAE](#), [LEED](#), [IgCC](#) and [NYStretch-2020](#). The Consultant will fully research the potential for funding sources (other than ESD) that can be used to finance innovative resilient building design features. For additional guidance on resilient building strategies see [Climate Resilience Strategies for Buildings in New York State](#) published by New York State Energy Research & Development Authority (NYSERDA).
- Explore ways in which the building can better serve the surrounding community during adverse events (disasters, extreme weather events, etc.) along with potential funding opportunities that target community resiliency (NYSERDA, NYDOS, FEMA, USDA, Justice40, etc.).

Task Deliverables: Schematic Design Report

Tasks 7: Design Development (up to 60% Design)

The Consultant must issue schematic design documents that are in compliance with the program, the budget and the schedule as set forth by ESD.

The Consultant must:

- Prepare a schedule for the construction period, identify phased work and any long-lead time for specialty items.
- Provide an estimate of probable costs. The estimate shall include major components and identify escalation factors. Cost estimates should be updated at the end of each task.
- Issue drawings and specifications. In general, drawings must indicate the existing conditions and proposed new construction. Drawings and/or specifications should include:
 - Site plans
 - Existing utilities
 - Renderings
 - Archaeological
 - Civil and structural
 - Landscape
 - Mechanical, electrical drawings and plumbing (if applicable).
 - Any hazardous or contaminated materials remediation/disposal or asbestos abatement/disposal, including coordination with any applicable regulatory agencies governing the handling/disposal of such materials.
 - Demolition, including any foundation modifications.

Task Deliverables: Design Development Report

Task 8: Construction Documents (100% Design)

The Consultant will be responsible for issuing construction documents that are in compliance with the program, the budget and the schedule as set forth by ESD.

The Consultant must:

- Provide complete specification sections and front-end documents.
- Prepare a final estimate of probable cost.
- Confer with all necessary regulatory agencies and incorporate their comments into the construction documents.
- Apply for, provide documentation for, and secure all necessary permits and regulatory approvals on behalf of ESD.
- Develop the scope of work for a Request for Proposals for third-party monitoring services during abatement (if applicable) and any other special inspection services required during construction.
- Prepare documentation for, and present the information to support review/approval by the ESD Board of Directors (as required) and the City of Buffalo Planning Board, inclusive of documentation to support a finding under the New York State Environmental Quality Review Act (assumed to require the completion of a full environmental assessment form [EAF] and any technical attachments, but not and environmental impact statement). Produce original Contract Documents, stamped and signed by an architect or engineer appropriately licensed to practice in the State of New York.

Task Deliverables: Construction Drawings, Specifications and other Relevant Bid Documents

Task 9: Bidding and Awarding

The Consultant will be responsible to provide assistance during the contract(s) advertising and award process in consultation with representatives from to-be-determined construction management firm (to be hired during the design development phase of design).

The Consultant must:

- Assist in pre-qualifying potential bidders.
- Attend pre-bid meetings.
- Assist in the development of responses to bidder inquiries.
- Assist in the preparation of addenda as needed.
- Assist in the development of responds to Requests for Information submitted by potential bidders.
- Assist in reviewing bids.

Task 10: Construction Administration

The Consultant must:

- Be a representative of, and advise and consult with, ESD during the construction phase.
- Provide Office Engineering services, in consultation with the Construction Manager, including:
 - Check detailed construction drawings, submittals, shop and erection drawings, and substitutions submitted by the Contractor for compliance with permits and contract documents.
 - Address Request for Information (RFIs) from the Contractor and Inspectors.
 - Prepare record (as-built) drawings (paper copies and AutoCad format digital files) on original contract documents as per the data supplied by Contractor.
 - Prepare preliminary and final punch lists for substantially completed construction work.
 - Responses to Requests for Information from the Contractor.
- The Consultant must provide Field Engineering services, in consultation with the Construction Manager, including:
 - Periodic visits to the site to observe the work in progress and provide appropriate reports, including attendance at weekly progress meetings. Provide written reports from site visits.
 - Observation and reporting to ESD on any performance tests required by contract documents.

IX. REQUIRED PROPOSAL CONTENTS

Proposals should demonstrate an understanding of the requirements and present the following information presented in the order shown below, clearly divided by sections. Proposals must include the following:

Executive Summary

- A summary of your organization's or team's ability to undertake the services being solicited for in this RFP.
- Key abilities of your proposed team and discuss any critical "distinguishers" describing why your organization should be selected over others.
- A summary of the Respondent team, with a complete organizational chart of key team members.
- Proposed total fee (including any anticipated reimbursable expenses) and total hours for all team members.
- Proposed timeframe (in months) needed to complete all proposed tasks.

Scope/Approach

Respondents should provide (at a minimum):

- An overall description of the approach to meet the objectives of the Project.
- Key scope of service items.
- Preliminary drawings and/or renderings that illustrate the approach to the building facade, first floor interior space, vendor stall placements and other proposed amenities.
- Draft phasing plan.
- Proposed stakeholder engagement methods.
- Techniques to best meet the project schedule.
- Any assumptions forming the basis of the cost estimate.

Fee Proposal

Respondents must provide a proposed fee for all services delineated by the tasks identified in Section VIII. The proposal must include a detailed staffing plan broken down by task, including the anticipated hours and hourly rate of each member of the Respondent team that will be working on the project. Please note any assumptions forming the basis of the cost estimate.

Fee proposals must also include a list of anticipated reimbursable expenses and the rate charged for each without markup.

Although proposed fees will be taken into account, ESD reserves the right to negotiate a lower or different fee structure with any Consultant that is selected.

Proposed Schedule

Respondents must submit a proposed schedule, indicating the time needed to complete each task and anticipated timing of project any important milestones.

Respondent Qualifications

Respondents must submit a description of the respondent team's qualifications, including a brief resume (no more than one page in length) for each key professional.

Respondent Experience

Respondents must submit project sheets showing relevant completed efforts by the team within the last ten (10) years, with a particular emphasis on similar projects including: an overall project description; image(s) illustrating the project, the cost of the project; the time necessary to complete the project; and names, addresses and telephone numbers of project references who may be contacted during the period of proposal evaluation.

Required Forms and Certifications (attach as appendices)

All certifications, forms, affidavits, etc. required in section XIV of this RFP ("Contractual Requirements") must be completed by the lead consultant and attached as appendices to the proposal in the following order:

- NYS Licensing Certifications
- Conflict of Interest Attestation
- State Finance Law Sections 139-j and 139-k Form
- Vendor Responsibility Questionnaire Form (completed form or VendRep System receipt)
- Iran Divestment Act Affirmation (on company letterhead)
- Executive Order 177 Certification
- Executive Order 16 Form
- OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
- OCSD-2 - Staffing Plan (must also be completed by any subconsultants)
- OCSD-4 - MWBE and SDVOB Utilization Plan
- Diversity Practices Questionnaire
- Encouraging the Use of NYS Businesses Form
- ST-220-CA Form
- W9 Form

X. SUBMISSION INSTRUCTIONS

Proposal Submission

A PDF copy of the proposal (with any appendices) must be uploaded to a dedicated Dropbox web link (that will be unique to each Respondent) prior to the deadline shown on the cover of this document. Respondents must request the dedicated Dropbox web link by sending an email to the email indicated on the cover by the date indicated on the cover. At the discretion of ESD, requests for deadline extensions may be considered prior to the deadline and, if granted, announced on the NYS Contract Reporter Website.

Pre-Proposal Meeting/Tour

A non-mandatory pre-proposal meeting and tour of the Market for prospective respondents will be held on the date indicated on the cover. To participate in the meeting, please RSVP to email indicated on the cover prior to close of business on the date indicated on the cover.

Respondents will be required to provide “sign-in sheet” information—company name, address/phone, and contact person email. ESD representatives will be present at the meeting to provide an overview of the RFP and any necessary clarification for completing required forms.

RFP Inquiries

ESD will accept written questions via email from prospective Respondents no later than deadline shown on the cover of this document. Questions must be submitted via email to the address shown on the cover.

No contact related to this solicitation with ESD Board members, staff or consultants, other than emails to the designated email account for the solicitation will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

XI. SELECTION CRITERIA

The proposals will be evaluated and scored/ranked using a “best value” selection process, which looks at a variety of evaluation factors that includes, but is not limited to the propose fee, the expertise of the team and approach to the work. Specifically, the Selection Committee will consider such criteria that, in ESD’s sole and absolute discretion, are in the best interests of ESD. The criteria listed below are of significant concern:

Proposed Fee (20 Points)

Experience of the Team (30 points)

- Experience of Respondent team staff being assigned to the project in general, and in particular, providing consulting services to municipalities, economic development agencies and/or other governmental agencies.
- Quality of work product as demonstrated in submitted work samples of past relevant projects.
- Demonstrated ability to complete projects in an expeditious manner.

Feasibility of Approach (25 points)

- Approach in methodology with respect to the scope of services that demonstrates maximum comprehension of and ability to provide such services.
- Adherence to recommendations set forth by the Broadway Market Business Plan
- Commitment of principals to lead the team and devote time to the project.
- Ability of the prime Consultant to identify qualified sub consultants.
- Creativity of preliminary design features and daft phasing plan

Stakeholder Engagement Approach (15 pts.)

- Innovative use of technology for outreach and communications.
- Breadth of stakeholders/venues to be engaged including those from the surrounding neighborhood, the City of Buffalo and the Western New York Region.
- Plans to engage existing and potential customers and vendors, especially those from surrounding neighborhoods and New American communities.

Diversity Practices (10 points)

Respondents to the RFP will be evaluated for Diversity Practices using a Diversity Practices Questionnaire. Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire submitted by each respondent to the RFP.

XII. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Respondent or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

- amend, modify or withdraw this RFP;
- revise any requirement of this RFP;
- require supplemental statements or information from any responsible party;
- accept or reject any or all responses hereto;
- extend the deadline for submission of responses hereto;
- negotiate potential contract terms with any Respondent;
- communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;
- cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Respondent.

All information submitted in response to this RFP is subject to the Freedom of Information Law (“FOIL”), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD and/or ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the “Response Information”) for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD’s retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller (“OSC”) pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The Contractor’s performance will be assessed by the ESD according to the achievement of the Contractor’s contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to ESD, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

Additional Services Requested

ESD may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

XIII. RESERVED RIGHTS

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the ESD. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify ESD of any proposed changes in staff immediately. ESD has an absolute right and discretion to approve or disapprove any proposed changes in staff. ESD, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of ESD. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

ESD reserves the right to short list proposals and to interview prospective teams prior to final scoring. ESD also reserves the right to seek final and best offers from bidders prior to making any contract award.

ESD reserves the right to reject a proposal if any document or item listed in this RFP is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a respondent without further consideration:

- Evidence of collusion among respondents;
- Any attempt to improperly influence any member of the evaluation panel;
- Discovery that a respondent purposely misled or knowingly provided false or inaccurate information in a proposal;
- A respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Information leading to a determination that a respondent would not be certified as a "Responsible Vendor" as defined by the State Comptroller; and
- Existence of any unresolved litigation or legal dispute between the respondents and ESD and/or the State of New York.

ESD reserves the right to reject any and all proposals and to waive any informalities or irregularities in procedure or proposals submitted.

XIV. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Respondent's submission as well as information about ESD's procurement requirements.

I. Conflicts of Interest

Respondents must attest they have read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- a. Gifts and Offers of Employment: Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD and/or ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD and/or ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- b. Disclosure of Potential Conflicts: Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD and/or ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

- c. Disclosure of Ethics Investigations: Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

2. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed below; the completion by Respondents of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.PDF

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

3. Vendor Responsibility Questionnaire

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD and its subsidiaries. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility ESD requires that all Respondents register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, Respondents are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

4. Iran Divestment Act

Every Proposal made to ESD or its subsidiaries pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each respondent and each person signing on behalf of any respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each respondent is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <https://ogs.ny.gov/iran-divestment-act-2012>

5. Executive Order 177

In accordance with New York State Executive Order 177, all Respondents must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at: <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

6. Executive Order 16

In accordance with New York State Executive Order 16 (“EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

“By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16.”

The required certification for can be found at: <https://esd.ny.gov/sites/default/files/EO-16-Certification.pdf> and must be signed and included in all Proposals.

7. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD and its subsidiaries are required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

7.1 Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an **overall goal of 30 percent for MWBE participation** (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation.

The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at OCSD@esd.ny.gov.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval. ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- If a respondent fails to submit an MWBE Utilization Plan;
- If a respondent fails to submit a written remedy to a notice of deficiency;
- If a respondent fails to submit a request for waiver; or
- If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

7.2 Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES.](#)

The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a MONTHLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital

status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov

7.3 Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire: <https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/DiversityPracticeQuestionnaire>.

7.4 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Respondents are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

7.4.1 Contract Goals

ESD hereby establishes a **6% for SDVOB participation**, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Respondent/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>

Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

7.4.2 SDVOB Utilization Plan

In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their bid.

The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

ESD will review the submitted SDVOB Utilization Plan and advise the Respondent/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

If a notice of deficiency is issued, Respondent/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent/Contractor and direct the Respondent/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:

- If a Respondent fails to submit an SDVOB Utilization Plan;
- If a Respondent fails to submit a written remedy to a notice of deficiency;
- If a Respondent fails to submit a request for waiver; or
- If ESD determines that the Respondent has failed to document good faith efforts.

If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

7.4.3 Request for Waiver

Prior to submission of a request for a partial or total waiver, Respondent/Contractor shall speak to the Designated Contacts at ESD for guidance.

In accordance with 9 NYCRR § 252.2(m), a Respondent/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Respondent's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to ESD.

7.4.4 Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- Copies of solicitations to SDVOBs and any responses thereto.
- Explanation of the specific reasons each SDVOB that responded to Respondents/Contractors' solicitation was not selected.
- Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- Other information deemed relevant to the waiver request.

7.4.5 Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

6.4.6 Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

8. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Respondents for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

9. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA (<https://esd.ny.gov/sites/default/files/ST220CA.pdf>) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

10. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

11. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

12. Insurance Requirements

The Contractor will be required to provide appropriate insurance coverage as determined by Empire State Development once the structure of the transaction with the Contractor has been finalized

Empire State Development must be named as an additional insured on a primary and non-contributory basis on certain policies. All policies should include a waiver of subrogation in favor of Empire State Development .

13.W-9 Form

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.

14. NYS Licensing Requirements

Respondents (and any proposed sub-consultants) required to certify documents must present evidence that they are licensed, as applicable, to practice engineering, architecture, landscape architecture, land surveying in the State of New York.